

**Agreement Between the United States and State of Montana  
Regarding the Montana Environmental Custodial Trust**

Whereas, the United States, acting through the United States Department of Justice, on behalf of the Environmental Protection Agency, the Department of Agriculture Forest Service, and the Department of Interior Fish and Wildlife Service, the State of Montana acting through the Montana Department of Environmental Quality and the Montana Department of Justice are parties to the Consent Decree and Settlement Agreement Regarding the Montana Sites entered by the United States Bankruptcy Court for the Southern District of Texas on March 13, 2009 in In re Asarco LLC, No. 05-21207 (Bankr. S.D. Tex.) (Docket No. 10539) (the "Consent Decree");

Whereas, the Consent Decree established the Montana Environmental Custodial Trust for four Asarco sites in Montana whose purpose was, inter alia, to provide funding for the cleanup of the Asarco Montana sites;

Whereas, EPA is the lead beneficiary for the East Helena Designated Property of the Montana Environmental Custodial Trust;

Whereas, the State of Montana is the lead beneficiary for the Mike Horse/Upper Blackfoot Designated Property of the Montana Environmental Custodial Trust;

Whereas, Section 6.r of the Consent Decree provides that "USDOJ and the State . . . may jointly agree to transfer a portion of the funds remaining in a [cleanup account] to [another cleanup account] under [the] Settlement Agreement if USDOJ and the State determine that the [cleanup account] would, after such a transfer, maintain sufficient funding for future Environmental Actions . . . including necessary funding for operation and maintenance of Environmental Actions";

Whereas, pursuant to Section 6.r of the Consent Decree, the United States and the State of Montana hereby agree as follows:

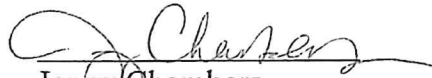
1. After a transfer of \$3,751,025 from the East Helena Cleanup Account there would be sufficient remaining funding in the East Helena Cleanup Account for future Environmental Actions including funding for operation and maintenance of Environmental Actions.

2. \$3,751,025 may be transferred from the East Helena Cleanup Account and placed into a segregated subaccount of the Mike Horse/Upper Blackfoot Cleanup account ("subaccount funds") to fund water treatment Environmental Action approved by the State as generally described in the State's April 23, 2020 letter to USDOJ attached hereto as well as any oversight costs of the State for such work.
3. The Montana Environmental Custodial Trust may submit budget requests for use of subaccount funds when it submits its budget requests for the Mike Horse/Upper Blackfoot Cleanup account.
4. The State of Montana, as lead beneficiary for the Mike Horse/Upper Blackfoot Designated Property, will approve otherwise appropriate budget requests submitted by the trustee for the trustee to implement Mike Horse water treatment plant optimization and ensuing operation and maintenance using subaccount funds through a term of four years following this transfer of funds; and
5. If at any time before completion of this term of four years, new circumstances or developments arise, the United States and the State of Montana will discuss and seek to reach agreement on any request by the State for an agreement to permit the use of remaining subaccount funds for State-lead performance of water treatment Environmental Actions under otherwise appropriate budget requests. Examples of new circumstances or developments include, but are not limited to, a demonstration of increased cost-effectiveness and savings of State-lead operation and maintenance of the water treatment plant or operational emergencies requiring State-lead intervention and case-by-case evaluations of specific scope and/or smaller work tasks that arise in the normal course of work better facilitated by the State.



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Montana Department of Justice  
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Thomas A. Mariani, Jr.  
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Alan S. Tenenbaum  
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